



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

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SEP 20 2010

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY  
(INSTALLATIONS AND ENVIRONMENT)  
ASSISTANT SECRETARY OF THE NAVY (ENERGY,  
INSTALLATIONS AND ENVIRONMENT)  
ASSISTANT SECRETARY OF THE AIR FORCE  
(INSTALLATIONS, ENVIRONMENT AND LOGISTICS)  
DIRECTOR, DEFENSE LOGISTICS AGENCY

SUBJECT: Supplemental Guidance for the Utilities Privatization Program

The National Defense Authorization Act for Fiscal Year 2010 changed several provisions in 10 U.S.C. § 2688. The DoD Components shall take immediate action to implement the attached supplemental guidance for privatizing defense utility systems.

My point of contact is Mrs. Sara Streff. She can be reached at 703-602-3662.

A handwritten signature in blue ink, reading "Dorothy Robyn", is positioned above the printed name.

Dorothy Robyn  
Deputy Under Secretary of Defense  
(Installations and Environment)

Attachment:  
As stated

**DEPARTMENT OF DEFENSE  
SUPPLEMENTAL GUIDANCE  
FOR  
PRIVATIZING DEFENSE UTILITY SYSTEMS**

**Dated: September 20, 2010**

**I. REFERENCES**

- (a) OMB Circular A-94, dated October 29, 1992
- (b) DoD Instruction 7041.3, dated November 7, 1995
- (c) DEPSECDEF Memorandum and Guidance, dated October 9, 2002
- (d) DUSD(I&E) Memorandum and Guidance, dated August 5, 2004
- (e) DPAP Memorandum, dated October 20, 2004
- (f) GAO Report 05-433, dated May 12, 2005
- (g) USD(AT&L) Memorandum, dated November 2, 2005

**II. PURPOSE**

Address changes to 10 U.S.C. § 2688 enacted by section 2821 of the National Defense Authorization Act for Fiscal Year 2010 (NDAA), Public Law 111-84.

**III. POLICY**

The NDAA modified 10 U.S.C. § 2688, the utility systems conveyance authority. The Department of Defense (DoD) has reviewed the changes and is providing the DoD Components the following guidance for implementing the utilities privatization program.

**A. Ten Percent Threshold**

To satisfy the new requirements in section 2688(a)(2)(ii), the economic analysis must demonstrate that the conveyance of the utility system will reduce the long-term cost to the United States of utility services provided by the utility system by ten percent of the long-term cost for provision of those utility services in the agency tender. The term “agency tender” refers to the Government’s “should-cost estimate.”

**B. Five-Year Waiting Periods**

Section 2688 now imposes waiting periods applicable to subsequent efforts to privatize a utility system, or a part of a system, under section 2688, or to convert the operation of the system, or a part of the system, from government employees to a private contractor under 10 U.S.C. § 2461.

If the Secretary concerned has determined that a utility system is ineligible for conveyance under section 2688(a)(2)(A), the DoD Component must wait at least five years from

the date of that determination before beginning any action to consider conversion of the same system, or a part of the system, to contractor operation under 10 U.S.C. § 2461.

Where the results of a public-private competition for conversion of the operation of a utility system under 10 U.S.C. § 2461 favor continued operation by civilian employees of the Department of Defense, a DoD Component must wait at least five years, beginning on the date of the completion of the public-private competition, before either: (a) beginning the utility privatization process under 10 U.S.C. § 2688 with respect to that utility system, or a part of the system; or (b) beginning another public-private competition for conversion of that utility system, or a part of the system, under 10 U.S.C. § 2461. For purposes of this paragraph, completion of the public-private competition occurs on the date that the Secretary of Defense submits to Congress the report required by 10 U.S.C. § 2461(c).

### **C. Restriction on Public-Private Competitions**

Utility privatization under 10 U.S.C. § 2688 will not be pursued while a public-private competition under 10 U.S.C. § 2461 is being conducted for that utility system.